

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 116 of 1979
in
SPECIAL CIVIL APPLICATION No. 2363 of 1978

For Approval and Signature:

Hon'ble MR. JUSTICE C.K.THAKKER
and
MR. JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHAVDA AMTHUBA WIDOW OF CHAVDA SHIVAJI JAVANJI

Versus

PATEL RAICHANDBHAI MOHANLAL

Appearance:

MR AV TRIVEDI for Petitioner
MR KC SHAH for Respondent No. 1
NOTICE NOT RECD BACK for Respondent No. 2
SERVED for Respondent No. 3
MR HM PARIKH for Respondent No. 10
UNSERVED AS REFUSED for Respondent No. 11
UNSERVED for Respondent No. 12

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 17/06/97

ORAL JUDGEMENT

The original petitioner in Special Civil Application No. 2363 of 1978 has preferred the present Letters Patent Appeal on account of rejection of the petition by a single word order "rejected" on November 21, 1978.

2. The property involved in this proceeding is the land bearing Survey No. 1599, admeasuring 3 acres 23 gunthas of village Nardipur, Taluka-Kalol, District-Mehsana. The respondent No. 2 - Chittaranjan Ramniklal Pandya was the landlord of the said land and the said land was in tenancy with one Patel Raichand Mohanlal since 1952-53 as the said landlord was a minor on the tillers' day i.e., April 1, 1957. He had initiated the proceedings, being Tenancy Case No. 1506 of 1957, under the provisions of Section 31 read with Section 29 of the Bombay Tenancy & Agricultural Lands Act {for short "BTAL Act"} but the said proceeding was not decided in his favour. Thereafter, he had obtained a Certificate under Section 88-C of the BTAL Act and then initiated proceedings under Section 32-T against his tenant Raichand Mohanlal for getting possession of the said land for his personal cultivation. But, before this proceeding there were entries in Panipatrak in the record of rights for the said land for the year 1956-57 to 1962-63 showing Raichand Mohanlal as well as one Jivanji Motiji as persons cultivating the said lands as tenants. The said Jivanji is father of petitioner's husband Shivaji. Before initiating the proceedings under Section 32-T, the landlord had issued a notice to both his tenants. As far as petitioner's father-in-law Jivanji is concerned, in the said notice it was clearly averred by him that Jivanji was never introduced as a tenant by the landlord and the landlord had never accepted his status as a tenant and the entries in his name as a tenant in the said land in the Panipatrak were illegal and improper. That the said notice was issued and served on the petitioner's father-in-law. He had not taken part in the said proceedings initiated by the landlord for getting possession of the land for personal cultivation. The said proceedings ended on September 28, 1962 with an order to deliver the possession of half of the land in favour of the landlord.

3. But it seems that again some mischief was committed while making entry regarding the delivery of possession of the said land in pursuance of the order passed by the Land Tribunal in favour of the landlord and

it was shown in the said entry that the possession of land was given to the landlord from both Raichand Mohanlal as well as Jivanji Manji. Jivanji Manji died in the year 1972 but till his death, he had not initiated any proceedings under Section 70-B of BTAL Act for getting a declaration that he was the lawful tenant of the land in question and that he was in possession of the land in question on the particular date. But thereafter, the present petitioner filed an application before the Kalol Taluka Mamlatdar and Agricultural Land Tribunal on December 31, 1973 alleging therein that the landlord was not cultivating the land personally and as her father-in-law was the tenant of the said land as his heir, she should be given possession of the said land. After getting the said application, the Tenancy Mamlatdar and Land Tribunal suo-motu initiated a proceeding under Section 32-U of BTAL Act and passed an order of November 21, 1976 ordering that the possession of half of the land should be given to the present petitioner as her father-in-law was the tenant.

4. Being aggrieved and dissatisfied by the said decision of the Agricultural Land Tribunal & Tenancy Mamlatdar, the original tenant Raichand Mohanlal preferred an appeal before the Deputy Collector of Mehsana, being Tenancy Appeal No. 5 of 1977. The learned Deputy Collector, after considering the material on record, came to the conclusion that the petitioner's father-in-law was not a tenant and consequently, the petitioner could not also become a tenant, and therefore, the suo-motu proceedings initiated by the Mamlatdar was illegal and invalid. He also came to the conclusion that the proceedings under Section 32-U was not also legal and proper. He, therefore, set-aside and quashed the order passed by the learned Tenancy Mamlatdar and Agricultural Land Tribunal.

5. Being aggrieved by the said decision, the present petitioner has preferred a Revision Application before the Gujarat Revenue Tribunal, being Revision Application No. TN.B.A.394 of 1978. The Tribunal by its order dated August 2, 1978 confirmed the order passed by the Deputy Collector and rejected the revision application preferred by the present appellant.

6. Being felt aggrieved by the said decision, the appellant had come before this Court by filing Special Civil Application No. 2363 of 1978. The said application has been rejected at the stage of admission

and hence, the present Letters Patent Appeal has been preferred.

7. It is vehemently argued before us by the learned counsel for the appellant Mr. Trivedi that the order passed by the learned Deputy Collector holding that the appellant's father-in-law as well as Appellant were not lawful tenant, was illegal and improper and the conclusions arrived at by the learned Deputy Collector were without any evidence on record. He further submitted before us that the Deputy Collector as well as the Revenue Tribunal have committed illegality in going into the question as regard the tenancy rights of the appellant as well as her father-in-law.

8. It may be remembered that the present appellant had given an application to the Tenancy Mamlatdar, making claim that her father-in-law was the lawful tenant of the land in question and the possession of the land was taken from her father-in-law on the ground of personal cultivation of the land and that the landlord was not personally cultivating the land, and therefore, the possession of land should be restored to her as she has become the lawful tenant of the land after the death of her father-in-law. The said claim of her was resisted by Raichand Mohanlal, who was admittedly tenant of the land in question, and therefore, in the circumstances when the appellant herself had gone before the Tenancy Mamlatdar for getting the possession of the land by making a claim that she was the lawful tenant of the land, it was necessary and incumbent for the Tenancy Mamlatdar to *prima facie* consider the question of her claim as a tenant of the land. It is true that the question regarding the claim of tenancy right is to be decided by appropriate proceedings under Section 70-B of BTAL Act but that does not mean that when an application is made before the Tenancy Mamlatdar for getting possession of the land on the allegation that the applicant was the lawful tenant of the land, the Tenancy Mamlatdar cannot go into a question of considering *prima facie*, the correctness or truthfulness of the claim made by the applicant.

9. The Deputy Collector as well as the Revenue Tribunal have considered the material on record for coming to the conclusion that the claim of the appellant that her father-in-law, and after him, she herself were tenant, is not correct and proper. The said conclusion

is arrived at by the Revenue Tribunal as well as Deputy Collector on the appreciation of the evidence on record. It is very pertinent to note that except the entries in Panipatrak for the year 1956-57 to 1962-63, no other material is produced by the appellant before the Tenancy Mamlatdar to support her claim that her father-in-law and offer him, she herself is the lawful tenant of the land in question. Nodoubt, there is a presumptive value for the entries in the Panipatrak and the learned Deputy Collector as well as Revenue Tribunal have taken into consideration the conduct of the appellant's father-in-law in not initiating any proceedings, though he was served with two notices by the landlord contending therein that the entries in the Panipatrak were illegal and improper and there was no relationship of landlord and tenant between him and the father-in-law of the appellant and that the landlord had never consented for his cultivating the land as a tenant. The Deputy Collector as well as Revenue Tribunal has also taken into consideration the oral evidence which was produced before the Tenancy Mamlatdar. The appellant's brother-in-law ie., brother of her husband Hinduji has deposed before the Tenancy Mamlatdar that his father Jivanji was never in actual and physical possession of the land in question and his father had never physically cultivated the land in question. He has also deposed that the entries in the Panipatrak in favour of his father were illegal and improper. That was the statement made by her brother-in-law ie., alleged original tenant's son against his own interest. The Deputy Collector as well as Revenue Tribunal have also taken into consideration that there was no evidence to support the entries in the Panipatrak and the appellant before us had not produced any material to corroborate the said entries. Therefore, finding of fact recorded by the Deputy Collector as well as the Revenue Tribunal in exercising the revisional jurisdiction could not be said to have been recorded illegally or capriciously so as to interfere the same by exercising the writ jurisdiction.

10. We are considering the finding recorded by the Deputy Collector as well as the Revenue Tribunal for the limited purpose of considering the claim of the appellant made by her before the Tenancy Mamlatdar for getting the possession of the land in question, by making allegations that her father-in-law and after him, she herself are the lawful tenant of the land. We are not holding that the finding recorded by the Deputy Collector as well as the Revenue Tribunal was the finding under Section 70-B of BTAL Act. The Deputy Collector as well as the Revenue

Tribunal have also taken into consideration the conduct of the present appellant as well as her father-in-law, in not initiating the proceedings for getting possession of the land under Section 84 of BTAL Act. We do not wish to express any conclusive opinion regarding the decision as regards the claim of tenancy raised by the petitioner, we are only considering the finding recorded by the Deputy Collector as well as Revenue Tribunal for the limited purpose as to whether the Tenancy Mamlatdar was justified in passing an order in favour of the present appellant or not. In our opinion, the Deputy Collector as well as the Revenue Tribunal were quite right and justified in holding that the Tenancy Mamlatdar was not justified in passing an order of possession in favour of the appellant. The learned advocate for the respondent has vehemently urged before us that the present appeal is not maintainable in law. It is necessary to mention here that the present appeal was admitted and it seems that it was admitted principally on the ground that the order of dismissal of the original petitioner was by a single word "REJECTED". As we find that the original appellant had no case on merits, it is not necessary for us to go into the larger question regarding the maintainability of the appeal, in view of the peculiar facts of the case and we are keeping the question as regard the maintainability of the appeal open to be decided in appropriate proceedings. We, thus, dismiss this appeal with no order as to the costs. Rule is discharged.

Prakash*